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THE CASE OF ROLLIN WHITE.

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STATEMENT OF FACT

AND

Brief for Mr. White,

BY GEO. W. DYER,
Of Counsel.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS,
1874.

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STATEMENT OF FACT.

In this application for a rehearing of five different patents, it will be observed that all the opposition is arrayed against the extension of one of them, that numbered 12,648, and the attention of the committee is invited more particularly to this patent.

The invention described therein principally consists in extending the chambers of a revolving cylinder all the way from the front to the rear, so that the arm is loaded from the rear, instead of from the front, as in the Colt revolver.

What are known as Smith and Wesson's pistols illustrate the invention referred to.

It appears from the record in one of the suits, in which Mr. White was constantly engaged during a great part of the life of this patent, suits which became necessary in order to assert his rights, which were constantly infringed, that this applicant commenced work in 1849, for Samuel Colt, in the manufacture of fire-arms, and from that time to December, 1854, remained thus employed, having alone, and in connection with his brothers, certain contracts for details of work.

During this period, commencing as early as 1849, he made certain experiments in constructing a pistol with a rotating cylinder, having chambers bored all the way through.

In the opinion of the court expressed in the suit of White against Allen, (2 Fisher, 440,) White completed this branch of his invention late in 1849 or early in 1850.

He did not, however, make application for a patent until early in 1855, for the reasons that Mr. Colt did not favor inventions in fire-arms by any of his employees; had discharged workmen for experimenting in revolving pistols, and that he

(White) was dissuaded by his brothers from making his invention public so long as they were in Mr. Colt's employ.

The patent on this invention, as well as upon two other inventions, was granted on April 3, 1855.

Mr. Colt's revolver patent of 1836, having been once extended for seven years, expired finally by limitation in 1857. While this patent of Mr. Colt's was in existence, it having an exclusive claim to automatic revolving cylinders, White could not put his invention in use without infringement, as Mr. Colt refused to give any license under his patent.

In view of the expiration of the Colt patent, White made his arrangements for manufacture, by giving Smith & Wesson, on Nov. 17, 1856, an exclusive right to manufacture fire arms under his patent No. 12,608.

Under this agreement with Smith & Wesson, these parties went on manufacturing fire-arms under the patent named, paying a small royalty on each.

By the terms of this agreement, however, Mr. White was to prosecute infringers at his own expense.

Such infringers sprang up at once upon the introduction of the White pistol, and in the prosecution of them all the remaining life of the patent was consumed, and nearly all of the royalty paid to the inventor.

At the proper time Mr. White made his application for the extension of the several patents referred to in the bill, which extension was refused by the Commissioner of Patents.

Pending this application for extension, and a short time before the hearing, Mr. Charles M. Keller, who had been long the attorney for White in the litigation of the patent, and was entirely familiar with everything connected with it, was taken ill, and was unable to be present at the hearing, which was conducted on the part of White by new counsel.

Just before the hearing certain important exhibits and evidence of Mr. White were stolen, and by reason of the illness of Mr. Keller some important testimony, in the nature of accounts, were not forwarded to the Commissioner of Patents.

The following extracts from the records will explain more clearly these statements and the bearing upon the decisions of the Commissioner:

Testimony of Hamilton M. Keefe, Crier of the U. S. Circuit Court.

NORTHERN DISTRICT OF NEW YORK, } ss.
City and County of New York. }

Hamilton M. Keefe, of the city of New York, being duly sworn, deposes and says:

I am crier of the United States circuit court for the southern district of New York, and have charge of all the models during examinations in said court. Kenneth G. White, Esq., United States commissioner, before whom the testimony in the matter of the application of Rollin White, for an extension of his patent of fire-arms, was taken, instructed me to lock up the models which had been put in evidence in this case. I did so, put some of them in the trunk, and the rest in a carpet-bag, and locked them up in a room adjoining the United States circuit court-room, and to which room no one had access but myself. I had occasion to go into the room on the afternoon of the 17th of March, as late as 5 P. M., and then saw that they (the models) were all there safe. I came out and locked the door.

On the morning of the 18th of March, I visited the room, and found that during the night it had been opened by some one, and the trunk broken open, most all of the models taken, and the carpet-bag had been taken away altogether, said carpet-bag having in it exhibits. There was also a valise which contained books and papers in the case, which had been dragged out of the room, through the court-room, through an open window, where I found it in the morning. In the room where these models and papers were kept were also a number of valuable models in other cases, and a quantity of clothes belonging to this deponent, none of which had been disturbed. I assisted in packing up all the pistols and exhibits that I found left after the robbery, and I have this day delivered all of them to the express company to be forwarded to the Commissioner of Patents, at Washington, D. C.

HAMILTON M. KEEFE.

Subscribed and sworn to before me, this 23d day of March, 1870.

J. F. STILLWELL,
U. S. Court, Southern District of New York.

From office of Keller & Blake.

CHAS. M. KELLER,
CHAS. F. BLAKE.

No. 16 MURRAY STREET, NEW YORK,
April 26, 1872.

HON. LEONARD MEYERS,
Chairman of the Committee on Patents:

DEAR SIR: At the request of Mr. Rollin White, I beg to state to you that pending his application for the extension, before the Committee of Patents, of his patent for improvements in fire-arms, he furnished me with an account of the sums expended in litigating the said patent, amounting to $38,329.09; but before I could put it into form to forward it to the Patent Office I was suddenly taken sick before I could prepare it, and for six weeks no one was permitted to enter my room. I had no partner in business at that time, and this, with other things which should have been attended to, was neglected by those who took charge of the matter in my place. Yours truly,

CHAS. M. KELLER.

Examiner's Report

In the matter of the application of Rollin White for the extension of the patent granted to him for repeating fire-arms, dated April 3, 1855. No. 12,648.

The questions which arise in this case are:

1st. Is the invention novel?

2d. Is it useful?

3d. Is it valuable and important to the public?

4th. Has the inventor been adequately remunerated for his time and expense in originating and perfecting it?

5th. Has he used due diligence in introducing his invention into general use?

To the first question I have to state, that this patent has been declared to be "good and valid" by Judge Nelson, in the case of R. White *et als. vs.* H. Booker *et als.*, and that I am unable to find any valid references which were not in evidence in this case. I, however, call your attention to a clerical or typographical error in page 29, in the printed statement of this case, filed by consent, where the number of the patent adjudicated upon is printed 12,649. It should be 12,648, which is the number of the patent in evidence in the case.

The evidence filed by the applicant in this case is almost unintelligible, owing to the entire absence of the exhibits to which the witnesses refer.

I am informed verbally that these exhibits were abstracted from the office of the magistrate before whom the testimony was taken after they were packed up for transmission to this office. *That the invention is useful, valuable and important to the public is apparent to my mind, and upon the latter point there is sufficient testimony from disinterested parties.*

The question of sufficient remuneration belongs exclusively to your honor's judgment and discretion. $64,899 is credited to this patent. The applicant has not kept separate and distinct accounts of the expenses attendant upon his fire-arm patents, but he estimates the expenses upon this patent (12,648) at $17,381.68. There is sufficient evidence that due diligence has been used in the premises.

Respectfully submitted.

CHAS. EVERETT,
Examiner.

The examiner, General Everett, whose business was almost exclusively on fire-arms, and who was thoroughly posted in these arts, and knew all the records in the Patent Office in relation to fire-arms, and who had charge of this class in the Patent Office, and on whom the Commissioner must depend in a great degree for the inspection of the records and ascertainment of the facts in the art, made the foregoing report.

Upon the testimony, the argument, and the examiner's report, the Commissioner of Patents refused the extension asked, in the following opinion:

Commissioner's Opinion.

"The extension of the patent for an improvement in repeating fire-arms, granted to Rollin White, April 3d, 1855, and numbered 12,648, is hereby refused.

"ELISHA FOOTE,
"*Commissioner.*"

Congress then being in session, Mr. White made immediate application for a rehearing before the Commissioner.

His application was favorably considered, and a bill for his relief passed both houses and went to the President for signature.

This bill was vetoed for the reasons which appear in the following extracts from the records, and which the President embodied in his veto message.

Letter of General Dyer.

ORDNANCE OFFICE, WAR DEPARTMENT,
WASHINGTON, *December* 11, 1869.

SIR: In the year 1855 Rollin White obtained letters patent for improvements in repeating pistols, in (among other things) extending the chambers of the rotating cylinder through to the rear, so as to enable the chambers to be charged at the rear by hand or by a self-acting charger.

Some time afterward, and prior to the breaking out of the rebellion, he assigned this patent to Smith & Wesson, of Springfield, Massachusetts, for the sum of $500 in cash and their obligation to pay him twenty-five cents royalty on each pistol manufactured under the patent, binding himself to apply for and to use his influence to procure a renewal of the patent. He afterward surrendered this original patent and obtained a reissue in three divisions. Two years before the expiration of the latter he applied to the Commissioner of Patents for an extension, upon the ground of insufficiency of compensation. The Commissioner rejected the application for an extension without assigning any reason, and the patents expired by limitation on the 3d of April, 1869, and the invention became public property.

On the 9th of April, 1869, a bill authorizing the Commissioner of Patents to reconsider the application of Rollin White for extension of his patents was introduced in the Senate, and passed without debate. It passed the House without debate on the 10th of April, but failed to receive the signature of the Vice-President before Congress adjourned. It is understood that it has now been signed by that officer, and only awaits the approval of the President to become a law.

Unless the ends of justice require the extension of this patent, it should not be renewed. So far as I am able to ascertain, justice to the Government and to the public forbids

this patent from being renewed. The validity of the patent has been questioned for many years, and it is understood that it was only affirmed by the Supreme Court by a tie vote, four of the justices voting affirmatively and an equal number negatively.

Its renewal is urged by Rollin White upon the ground that he has not been sufficiently compensated for his invention. Rollin White has received nearly seventy-one thousand dollars as royalty. Smith & Wesson, for the years 1862, 1863, 1864, 1865, 1866, 1867, and 1868, returned incomes amounting in the aggregate to about one million dollars. This was derived chiefly from the manufacture of fire-arms under Rollin White's patent, that firm holding the exclusive right to manufacture under it, and being engaged almost exclusively in their manufacture.

It is believed that the Government suffered inconvenience and embarrassment enough during the war in consequence of the inability of manufacturers to use this patent, and that its further extension will operate prejudicially to its interest by compelling it to pay to parties already well paid a large royalty for altering its revolvers to use metallic cartridges.

For these reasons I respectfully request that you will call the attention of the President of the United States to this subject before he acts upon the bill which is now before him.

Respectfully, your obedient servant,

A. B. DYER,
Brevet Major-General, Chief of Ordnance.

Hon. W. W. Belknap, *Secretary of War.*

[*Endorsement.*]

Ordnance Office, *December* 11, 1869.

Brevet Major-General A. B. Dyer, Chief of Ordnance, asks that the attention of the President be called to the patent of Rollin White, and recommends that it be not renewed.

War Department, *December* 13, 1869.

Respectfully forwarded to the President approved.

WILLIAM W. BELKNAP,
Secretary of War.

The whole matter being brought thus afresh before the Senate, Commissioner Foote, displaced from the Patent Office,

however, at that time, wrote the following letter to Senator Ferry, of Connecticut:

Letter of Commissioner Foote.

WASHINGTON, NATIONAL HOTEL,
January 17, 1870.

DEAR SIR: For the purpose of answering the inquiries in your letter of the 14th instant, I have re-examined the papers on file in the Patent Office to refresh my recollection.

On the hearing of Mr. Rollin White's application for an extension of his patent, Mr. Harding, of Philadelphia, and Mr. Stoughton, of this place, appeared as his counsel. Mr. White spoke in his own behalf, and Mr. Harding was heard two or three times, and to those acquainted with that gentleman I need not say that the cause was argued with much ability.

It was stated that Mr. Keller, of New York, who had acted as counsel for Mr. White in suits upon his patent, and in taking testimony to be used on his application, was absent on account of sickness.

Several persons (perhaps they could not properly be called "counsel") seemed to be much interested in Mr. White's behalf, and strongly pressed the granting of the extension.

Soon after Mr. White's application was made (in 1866) objections to the extension were filed in the Patent Office by several persons, and testimony in support of them was taken. Afterward the opposition of some was formally withdrawn, and at the hearing no one appeared to oppose the extension.

I was not aware that Mr. White had failed to obtain all the testimony he desired. I do not now recollect that any complaint was made in that respect. The time the application was pending, about two and a half years, would seem to have been sufficient to probate all needful evidence.

At the hearing it was stated by Mr. White that a part of his models, intended to illustrate his inventions, had been lost or stolen, and it appeared to him to be a source of much regret and disappointment. I do not think, however, that I had any difficulty in fully comprehending his inventions and other devices referred to without them, from the patents and models in the Patent Office.

The principle I had adopted for my own action, and which I thought accorded with the design and intent of the statute, was to grant extensions in those cases only in which the in-

vention had effected a decided and manifest improvement, and while great benefits had been bestowed upon the public, I was quite liberal in respect to the compensation received. Mr. White's invention did not appear to me to come up to my requirements. Their object was to improve the Colt pistol, and the leading idea seems to have been to attach to it a magazine of cartridges, one of which shall be forced from the rear into the chamber by a plunger, operated by the cocking of the pistol. To prevent the explosion of cartridges by an escape of fire laterally, a spring guard was provided; and a shield also was placed in front to arrest any ball that might be accidentally shot from a chamber not in line with the barrel. In his experiment a leather plug or packing was put in the rear of the charge, and that seemed to prevent the escape of fire and the explosion of all his cartridges.

For the several devices three patents were granted, in one of which the claim was broadly made for boring through the cylinder, whether loaded by hand or by the plunger.

In the form in which Mr. White made his pistol, it is believed to have little or no practical utility. Indeed, breech-loaders generally were then failures. They encountered practical difficulties that seemed insurmountable. Fire would escape from the joint at the breech and rapidly wear it away. Or if made gas-tight, expansion by heat and other causes would obstruct the operation. The object seemed hopeless and unattainable until the introduction of the metallic cartridge. When that was perfected, with its flange and fulminate and machinery to manufacture it, the difficulties were removed, and the breech-loader sprang at once into extensive use.

It was then that the claim in Mr. White's patent, for boring through the cylinder instead of nearly through, as Colt had done, became of great pecuniary value. But before White, other arms had been bored through—pistols, muskets, and rifles. In one a cluster of revolving barrels, much like Colt's chambers except in length, had been bored through. The metallic cartridge necessitated a boring through, and when its use became desirable in the Colt's pistol, the boring through, as other arms had been bored through, it seemed to me, would have followed as a matter of course, as well without as with Mr. White's devices.

I did not, therefore, regard his inventions as having materially advanced the art to which they related. He had re-

ceived, according to his own statements, in license fees, from the three patents, $70,899. His expenses, he states, were $22,457, a large portion of which were expenses of litigation, from which no proceeds were credited. His rewards, I thought, had been ample, having reference to the benefits conferred upon the public.

In view of the facts detailed I do not think that more arguments or more illustrations, or indeed, more testimony, would have altered the conclusions to which I arrived or the decision which I made.

Very respectfully, yours,

ELISHA FOOTE.

Hon. O. S. FERRY, *United States Senator.*

Extracts from Remarks of Senators in favor of Mr. White's Bill.

On May 31st, last, the bill for the relief of Rollin White passed the Senate, the "reasons set forth by the Chief of Ordnance," in his communication accompanying the President's message, to the contrary notwithstanding. In the final discussion which preceeded the vote in the Senate, only two Senators (coming from the same State) spoke in opposition to the passage of the bill over the veto. In favor of the bill the following extracts from the remarks of Senators are cited:

Mr. CRAGIN said:

Mr. White applied for an extension of his patent under the existing laws of his country, just as any man might apply. He had five distinct patents and fourteen claims, and all these were pending at the same time before the Commissioner of Patents. The whole argument of the Senator from Connecticut, the whole argument of the Commissioner of Pattents, the whole argument of General Dyer in his letter to the Presidents, is aimed against one single patent; and I venture to say that there is not another case on record where a man having five patents about to expire made an application for the extension of all of them, and met a refusal in *every single* case. The fact is that the Commissioner of Patents at that time did not examine this case carefully and critically. I know what I say. He did not examine the evidence, for the evidence was not there, or at least was there in such a shape as to be unintelligible. Mr. White asks for a

new hearing before the Commissioner because his exhibits and models were lost or stolen before the former hearing, so that the Commissioner could not understand the merits of his case. For instance, here was evidence before the Commissioner:

"*Question.* Look at exhibits C, D, F, and G, and state whether you have before seen them or cartridges like them; and if so, when first and by whom they were shown and exhibited to you."

"Look at exhibits C, D, F, and G;" the witness' attention is called to them. Those exhibits were stolen; they were not in the office of the Commissioner of Patents, and it is not strange at all that the Examiner should have said that the testimony was really unintelligible, because these exhibits are referred to by letters, and the witnesses in New York testify having these exhibits before them; but they were not in the Patent Office, and the *examiner could not see and the Commissioner could not see them.* Hence there is a reason, and a strong reason, why this applicant should have another chance, why he should bring the exhibits which were stolen, which were absent, and I assure the Senator from Connecticut that there was something more than a cylinder bored through. There was one claim for that, but there were fourteen claims, thirteen claims upon other devices; thirteen claims upon devices that could not be and were not represented before the Commissioner, from the fact that they had been stolen in New York.

The Senator from Connecticut says that the Committee on Patents have uniformly rejected every case of this kind. I have before me a bill which has passed this Senate and been approved by the President since the passage of this bill for the relief of Rollin White, "A bill for the relief of Polly Hunt." The Senator from Connecticut probably recollects that case. It is a case for a rehearing precisely like this; a case that was rejected by Mr. Stout, the acting Commissioner, just before Mr. Foote came into the office. Application was made to Congress to grant to Polly Hunt a new hearing before the Commissioner, and the bill passed both houses of Congress, and was approved by the President on the fifteenth day of March last, a precedent precisely like this; and the wording of the bill is word for word like the bill for the relief of Rollin White, except the change of names and the description of the patent, and in this case there was no pre-

tence whatever that there was any loss of exhibits or models.

The main reason why the President vetoed this bill was the reason stated by General Dyer, that the Government was interested in this patent. I wish to bring before the Senate the fact distinctly and clearly that the Government has now no interest whatever against the extension of this patent, that an assignment to the Government has been made from all the parties interested in this patent, every one of them releasing the Government in the past and giving it the right to manufacture and use these arms in the future; so that the reasons which induced the President to veto this bill are entirely removed, and to-day the case stands as though the Government had no interest in it whatever, as it certainly has none.

This case only asks for fairness; it only asks for justice; it only asks that a man who through misfortune was denied a fair trial, his exhibits and models stolen from him before the hearing of his application for an extension, shall have a new chance, a new hearing before the Commissioner of Patents. It does not imply that the Commissioner will extend this patent. It gives every person interested a chance to come and oppose the extension of the patent just the same as in the original application.

Mr. Sumner said:

I desire to say that with me the statement of the Senator from New Hampshire is sufficient to determine my vote. He speaks from his knowledge of this case, and that is enough for me. I shall vote to sustain the bill.

Senator Carpenter said:

I do not desire to waste any of the time of the Senate, but simply to say that while I am not ordinarily in favor of renewing of patents, I think this is the strongest case that has ever been presented to Congress since I have known anything of its proceedings. I think Mr. White makes out a case which would induce any judicial court in the land to grant him a new trial; and it is perfectly clear that the veto message was sent here under a total misapprehension as to what the bill was, supposing the bill renewed the patent, whereas the bill merely granted a new trial. I believe there never was a stronger case presented to any tribunal having jurisdiction to

grant a new trial than is presented here by the petitioner in this case.

Now, the only thing submitted to the Committee on Patents, and the only thing considered in the Senate, and the only thing concluded by this bill, was the right of Mr. White to have a hearing before the Commissioner of Patents. If upon that hearing he cannot satisfy the Commissioner that this patent ought to be renewed, then, of course, his application will be denied. Congress has not attempted to exercise that jurisdiction which the law vests in the Commissioner; nor should it in any case do so. But it is indispensable that Congress should grant this new trial, and should exercise in a proper case this power, because the power exists nowhere else. As I understand, and as I remember the facts of this case, this hearing of Mr. White's before the Commissioner was on the last day within the term during which by law he could pass upon the application; and in consequence of the absence of his models, which had been stolen from an examiner's office in New York, where they had been lodged to take testimony, and the sickness of his counsel at the hearing, Mr. White claims that his case was not properly presented. The Senator from Connecticut answers this by a letter from that Commissioner, which in substance says that nothing whatever in the way of proof could have changed his opinion.

Is that an answer to Mr. White's application to be heard again? If it is to be taken in the broad language in which that Commissioner's language states it, that was a sufficient reason why Mr. White should have a hearing before a Commissioner with whom proof would make a difference.

I know nothing about the merits of that hearing; I know nothing about Mr. White; I know nothing about the question whether he ought or ought not to have a renewal of his patent; but I do undertake to say that the case made by him is such as would induce any court in the United States to grant a party a new trial; and whether that new trial shall result in any benefit to him or not will depend upon the merits of the case as he shows them at the new trial before the Commissioner.

Senator WILLEY, chairman of the Senate Committee on Patents, said:

Now, Mr. President, I think we ought to pause before we allow a military officer of this Government upon his own

mere motion to interpose and arrest the legislation of Congress by substituting himself for the legally authorized and appointed officer of the Government whose duty it is to examine into all such questions. What right had General Dyer to interpose his authority here? And if he had the right or assumed the right, why did he not proceed according to the law in the case? If he is to substitute himself as the Commissioner of Patents to examine into such matters, why did he not give the other party notice to come before him to be heard? Why did he assume not only to discharge the duties of another officer of the Government, duties not pertaining to his position at all, but to do it upon *ex parte* testimony, without giving the other party any notice of what he was doing? I think, sir, that we ought to pause before we allow ourselves to be influenced by the action of an officer of this Government in such a summary and unauthorized mode as this. What does he assume to do? He decides upon *ex parte* testimony that Mr. White has received $71,000 as his compensation growing out of this patent, and that that sum is a sufficient compensation for the value of the invention.

Well, now, sir, is that a fact? It may be a fact that Mr. White has received that sum in the aggregate; but that is but one side of the case. General Dyer does not appear to have taken into consideration at all the expenses of Mr. White; he does not attempt to ascertain what his net receipts have been, what his net compensation has been after deducting expenses. He does not, so far as I can see, allow anything for expenses at all in estimating White's net receipts; but simply advises the President that Mr. White has received $71,000 of compensation, and that this sum is amply sufficient compensation.

But what are the facts in the case? Here is Mr. White's affidavit, showing that although he received $71,000 compensation, he has been at an expense of about sixty thousand dollars. That is his affidavit, and he gives the items showing the important fact that the net compensation he has received amounts to little over ten thousand dollars.

Now, sir, this is the result of an *ex parte* examination by an officer who had no official authority to make the examination, and who, from the nature of his education and of his duties, was not prepared to make a proper and scientific or a satisfactory examination at all in such a case. The law has provided the officer who is to make such examinations. I

think, then, that the Senate ought not to allow these officers of the Government to assume a jurisdiction that does not belong to them, and to attempt to advise the President of the United States in regard to matters which they do not understand, and that, too, upon *ex parte* testimony.

Now, sir, as to the real grounds of this application here, what are they? They are grounds that would appeal to a judge of a court for a new trial, and nothing more. The ground of the application is, shall we allow this applicant to have a fair opportunity of making his application, which he was prevented from doing by providential dispensations, by the theft of his models and his testimony, as he has stated?

If the Commissioner shall be of the opinion, as some Senators seem to think is the fact, that there is no value in this patent, that he is not entitled to have it extended, that is a question for him to decide. He is appointed and selected for that purpose, and it is to be presumed that he can decide that question better than any other officer; better than the Senate; better than General Dyer; better than the President of the United States. He is the officer appointed to make such examinations. All that is asked on the part of the applicant is that he may have a fair opportunity to be fairly heard; to supply before the Commissioner the lack of testimony which he wanted before; to supply the models that were stolen, and to supply the depositions and other testimony which were stolen at the time he made his former application. Is that unreasonable? Is it not such a case as any court under the circumstances would grant a new trial? I think it is, and therefore, without going into the examination of this case any further, I feel disposed to submit it to the Senate.

Senator Howard said:

I wish to say but one word on this subject. The object of the bill upon which we are to vote is, as I understand it, to allow the patentee, Mr. White, an opportunity to make another application to the Commissioner of Patents for a renewal of his patent, but gives to the patentee simply the right of making another application for a renewal to the proper officer, who is the Commissioner of Patents; and this ought to be understood by the Senate. The patentee alleges that for some reason or other he was not able, within the time prescribed by the statutes, to proceed before the Commissioner of Patents to obtain a renewal of his patent; and he

appeals to Congress simply to grant him an opportunity of a new trial; in short, to give him the inestimable privilege, as he seems to consider it, of having another lawsuit; and for one, if a party puts himself in that predicament and thinks he is to gain by having a lawsuit, I am entirely willing to gratify him. I shall therefore vote for the bill.

Senator MORRILL said:

I am, as a general rule, entirely opposed to a renewal or extension of any patent, but, having examined this question, like the Senator from West Virginia, I am fully satisfied that injustice has been done this patentee.

Mr. President, I confess that my sympathies are excited in his behalf. He has been persecuted the last ten or fifteen years by these rich and well-fattened companies that have encroached on his rights, and I have no doubt they robbed him of nearly all that he should have received for his patent; at any rate, the amount he has actually received, by his own testimony here, to which, I think, no objection will be made.

Now, Mr. President, it seems to me that the Commissioner of Patents cannot have made up his judgment upon the report of the examiner. Every point made by the examination was in favor of the petitioner with only a single exception, and that was in relation to the evidence being unintelligible on account of the absence of the exhibits to which witnesses refer, and which only makes the claim of the petitioner for a new trial still stronger. It seems to me that this testimony of General Dyer's, made two days before the bill passed, ought to be thrown out of the case. It is no more than justice to the party to throw that entirely out of the case; and if we do throw that out, it will take away the whole foundation of the veto. Mr. White should not be defeated by General Dyer. I therefore shall be compelled to vote in this instance against sustaining the veto.

Senator HOWELL said:

Mr. President, this is a very peculiar case it strikes me. As a general rule, I am not in favor of the extension of patents; but here comes in this case a poor man and a lame man, who has invented a pistol that far excels anything Colt ever brought before the public, and he complains that he had a hearing tendered him before the Commissioner of Patents when the counsel who was present did not understand his

case, the one who did especially understand it being absent; that he himself was detained away at the time the case was called, so that he could not give his personal attention to it; that his models were lost or stolen, and that therefore it was impossible for him to make, or for his lawyer, who is not posted in regard to the case, to make out a fair case and to have a fair hearing before the Commissioner of Patents. Then we have the organ of the Committee on Patents here time after time making zealous and earnest and lawyer-like arguments against this poor man, and telling us here to-night that the Government is interested against him, and that the manufacturers of Connecticut are interested against him, and therefore he should not have a hearing before the Commissioner of Patents. Is this a proper consideration to bring before the Senate of the United States?

Following right upon that we have, in a letter from the Commissioner himself, the statement that this invention of Rollin White is a matter of no great consequence; that there is no particular value in it. How, then, is the Government interested in it? Why should the Government prevent the extension of the patent that it may have the benefit of this fine instrument? And how are the manufacturers of New England so greatly interested in it if this invention of Rollin White is an invention of no particular value? It is a matter of particular value. It is the nicest and finest instrument of the kind that was ever invented in any country on the face of God's earth. What is the use of saying it is of no particular value? Let that allegation come from whatever party it may the whole circumstances of the case show conclusively that it is of particular value, that it is of great importance, and that a combination of Government officers and manufacturers in New England are here in the Senate chamber seeking to deprive this poor man, this lame man, this honest man, who by accident could not obtain a fair hearing before the Commissioner of Patents, of the poor chance of a new hearing under the circumstances, with all this pressure of power and of interest and of money against him.

I say it is a case that appeals to the justice and the common decency of the Senate of the United States to stand by and give Rollin White a new hearing and a fair chance—as fair at least as under the circumstances can be had by a poor man before the Commissioner of Patents; and for that reason I shall vote for the bill.

The Senate passed the bill over the President's veto by a vote of 41 to 13, but the measure failed in the House of Representatives and went over for that session.

Mr. White has since that time pressed his application before each session of Congress, but, although uniformly getting favorable consideration of committees, has been unable to bring his measure to a vote.

In the last session of Congress, after consultation with the committee, Mr. White concluded to present a bill in a new draft, which is here appended:

A Bill for the relief of Rollin White.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Patents be, and hereby is, authorized to rehear and determine the applications of Rollin White for the extension of his letters patent for improvements in fire-arms, issued April third, eighteen hundred and fifty-five, numbered twelve thousand six hundred and thirty-eight, twelve thousand six hundred and forty-eight, and twelve thousand six hundred and forty-nine, (number twelve thousand six hundred and thirty-eight having been reissued May first, eighteen hundred and sixty-six, numbered two thousand two hundred and thirty-six, and twelve thousand six hundred and forty-nine having been reissued October twenty-seventh, eighteen hundred and sixty-three, in divisions, numbered one thousand five hundred and fifty-seven, one thousand five hundred and fifty-eight, and one thousand five hundred and fifty-nine,) upon the evidence, in the same manner and with the same effect as if they were original applications made within the time prescribed by law for said extensions, before the Commissioner of Patents, and as if no hearing had ever occurred; and if any of said patents shall be extended, it shall be for a period of seven years from the date of such extensions: *Provided*, That in case of such extensions being granted, no damage shall be recovered for infringements thereof between the date of the expiration of the original patents and the date of such extensions: *And provided also*, That the Government of the United States shall have the right to manufacture and use all the improvements included in said patents, in case of such extensions, freely and without charge, and without liability

for damages for the use of said patents: *And provided also*, That in case said extensions shall be granted, any person, firm or corporation that, since the expiration of said patents and prior to the passage of this act, shall have constructed machinery for the manufacture of the inventions described in said patents, or have engaged in the manufacture of said inventions, using machinery previously constructed therefor, shall have the right to apply for and be entitled to receive a a license from said Rollin White to manufacture and sell the fire-arms described in said patents for and during the extended term thereof, upon reasonable conditions as to security for payment of the royalty hereinafter mentioned, and as to making report on oath of manufacture and sales, and upon payment of a royalty to said Rollin White of fifty cents in quarter-yearly payments, upon each and every fire-arm so manufactured and sold.

Also a copy of the Report of the Committee on Patents, to which attention is invited, as it presents a compact history of the case, and presents cogent arguments for the passage of the bill:

The Committee on Patents, to whom was referred the petition of Rollin White for leave to apply to the Commissioner of Patents for the extension of certain patents granted to him in 1855, *and the bill entitled "An act for the relief of Rollin White," have given a full hearing to all the parties interested, and beg leave to submit the following report:*

Rollin White having certain patents for improvements in fire-arms, issued April 3, 1855, and numbered 12,638, 12,648, and 12,649, (number 12,638 having been reissued May 1, 1866, numbered 2,236, and number 12,649 having been reissued October 27, 1863, in three divisions, numbered 1,557, 1,558, and 1,559,) made seasonable application to the Commissioner of Patents for extensions of the same. He employed as his attorney Mr. Charles M. Keller, of New York, an eminent patent lawyer, who had long been his counsel, and was entirely familiar with his inventions, having been engaged in several suits upon them. Mr. Keller prepared Mr. White's papers in his application for the extension, and attended to the taking of the greater portion of the testimony in his behalf. Just before the time for closing testimony, and three or four weeks before the day of hearing by the Commissioner

of Patents, Mr. Keller was taken sick, and was incapacitated for business until after the hearing hereinafter mentioned. By reason of this sickness he failed to forward to the Patent Office a quantity of testimony, including a certain account of Mr. White, showing the expenditure of $38,321.09 as a charge against the patents. About the same time, and just before the day of hearing by the Commissioner of Patents, the office of the United States commissioner in New York city, before whom much of the testimony in behalf of Mr. White had been taken, was broken into, and the testimony and numerous exhibits referred to therein were stolen and carried away, and have never been recovered. No other property having been taken, it may be inferred that this offence was committed by or in behalf of some opposing party.

Under these circumstances, with new counsel not acquainted with the facts or with the intentions of Mr. White, and without most important testimony and exhibits, and without the account before referred to of $38,321.09 of expenditures, a hearing was had before the Commissioner of Patents, who, on April 2, 1869, refused the extensions without assigning any reason for his action. It will be remembered that this hearing occurred on the day before the patents expired. As the Commissioner had no jurisdiction to act in the matter after the day of expiration, he could not grant a postponement of the hearing until Mr. White could remove the difficulties under which he labored.

Mr. White made at once before Congress, then in session, the usual petition for a rehearing of his applications for extension before the Commissioner of Patents, and upon such petition Senate bill No. 273, entitled "An act for the relief of Rollin White," passed both branches of Congress just before the final adjournment, but not in season to be signed by the President of the Senate. Being signed at the ensuing December session, the bill was vetoed by the President January 11, 1870, at the request of General A. B. Dyer, Chief of Ordnance, as fully set forth in Senate Ex. Doc. No. 23, Forty-first Congress, second session.

The objections made by General Dyer would seem to be quite proper for the consideration of the Commissioner of Patents had there been a rehearing under that act, but quite insufficient, in the opinion of the committee, to justify an executive veto. They were objections to the granting of extensions rather than to a rehearing.

In the Senate the bill was subsequently passed, notwithstanding the veto of the President; but in the House it was defeated.

At the next (being the present) Congress Mr. White renewed his petition, which is the subject of this report.

It will be observed that Mr. White does not ask for an extension of his patents by Congress, but for permission to have another hearing before the Commissioner of Patents, where there can be a more full and thorough investigation of all the questions involved than Congress can possibly have time to make. At the hearing, of which the law requires due notice to be given, all opposing parties can be present and have a full consideration of all reasons why the extensions should not be granted.

It should also be stated that opposing parties at the hearing before the committee claimed and offered evidence tending to show that certain important features of Mr. White's inventions were not really invented by him, and that his patents, so far as they embrace those features, were never valid. The committee do not feel called upon to decide these difficult mechanical questions. The Commissioner of Patents is the proper tribunal for the decision of such questions, and the committee are confident that the present Commissioner will never order an extension of either of these patents unless, upon the law and the evidence, Mr. White shall establish his right to such extension.

It appears to the committee that, by reason of the illness of Mr. Keller, the abstraction of important testimony and exhibits, which, according to the report of the examiner, rendered the evidence "almost unintelligible," and the non-production of the account of expenditures alluded to, which would have reduced Mr. White's profits to but little more than a third of the amount the Commissioner assumed them to be, as hereafter appears, Mr. White has not had that full and fair hearing which it is the intent of the law to grant to inventors upon their applications for extension.

But while the committee thus favor the prayer of Mr. White for a rehearing, they are aware of the fact that certain manufacturing interests, upon the belief, as claimed by them, that Mr. White's inventions had become public property, have made investments of capital for the manufacture of the same, and for this reason are of the opinion that such manufacturers may be entitled to consideration. They have, there-

fore placed in the bill reported by them, by way of relief to such parties, a provision which will give the right of manufacture and sale under certain conditions named.

The committee have not reported in detail upon the value of these inventions and the amount of compensation received by Mr. White, because it appeared to them that for the reasons named Mr. White was clearly entitled in equity and fair dealing to a new hearing before the Commissioner of Patents upon the ground that he cannot be regarded as really having had a hearing at all. The committee do not base their decision upon the ground that the Commissioner did not properly weigh the testimony before him, nor that he did not correctly decide the case as it appeared before him; but the ground is that Mr. White, through accident and misfortune, and without fault on his part, was unable to lay his case properly before the Commissioner. The committee consider the application of Mr. White quite similar to a petition for a new trial in a court, and have so decided it. As has already been stated, the Commissioner in refusing these extensions did not assign any reasons; but he wrote a letter to Senator Ferry, of Connecticut, on the 17th of January, 1870, for the purpose of defeating the passage of the bill over the veto of the President, in which, after describing the inventions, he summed up by stating that the patentee had received $70,899 and expended $22,457, and decided that his rewards had been ample, having reference to the benefits conferred on the public. But it does not appear what his decision would have been had evidence of the additional expenditure of $38,321.09 been before him, except as it may be inferred from the following concluding paragraph of his letter: "In view of the facts detailed, I do not think that more arguments, or more illustrations, or, indeed, more testimony, would have altered the conclusions to which I arrived, or the decision which I made."

The committee, while not attempting to base their action on this ground, are of the opinion that Mr. White was (to say the least of it) unfortunate in not having his case heard before a commission whose "conclusions" might be "altered" by "more arguments," "more illustrations," or "more testimony."

It appears sufficiently clear to the committee that these inventions are of great value to the public, not only by direct testimony, but by the zeal, energy, and character of the op-

position arrayed against them. It also appears that by reason of the dominant character of certain inventions of Mr. Colt, Mr. White was unable to bring his inventions into public use until two or three years after his patents were issued, and therefore has had the actual benefit of his inventions for only about eleven and a half years. It further appears that Mr. White is in feeble health, a cripple for life, and is possessed of very moderate pecuniary means. The committee, therefore, in view of all the foregoing facts, recommend the passage of the accompanying bill as a substitute for the bill referred to the committee, which, it will be observed, aims not only at providing for Mr. White a very moderate compensation for his inventions, in case the extension shall be granted by the Commissioner of Patents, but seeks to make an equitable arrangement for what are considered opposing interests, and wholly avoids the objections raised by the veto message of the President before alluded to, by granting full authority to the Government to manufacture and use all the improvements included in said patents freely without charge.

If more could be necessary for the protection of the Government it may be found in the following assignment, executed by Mr. White on the 17th of December, 1869:

License to the Government to use, free of cost, patents for improvements in fire-arms.

Know all men by these presents, that I, Rollin White, of Lowell, Massachusetts, for and in consideration of the sum of one dollar to me in hand paid, (the receipt whereof I hereby acknowledge,) have remised, released, and forever discharged, and I do hereby, for myself, heirs, my executors, administrators, and assigns, remise, release, and forever discharge the Government of the United States of and from all debts, demands, claims, action, and causes of action, which I now have in law or equity, or of whatsoever nature, or which hereafter or at any other time I may have, from any and all use by the Government of the United States of my improvements for fire-arms patented in 1855, being the same improvements included in a recent act of Congress for my relief.

In testimony whereof I have hereunto set my hand and seal this seventeen day of December, eighteen hundred and sixty-nine.

[SEAL.] ROLLIN WHITE.

Witnessed by—
H. A. SNOW,
C. D. GILMORE.

The undersigned members of the committee concur in this report. The chairman, having on a former occasion acted as counsel for Mr. White, did not take any part in the hearing.

E. A. HIBBARD,
H. W. BARRY,
M. M. WALDEN,
E. I. GOLLADAY,
C. C. ESTY.

After this report was made, the session was so far spent that the committee was not called again, and the question in this particular form has never been presented to Congress for action.

The matter is now before this committee, upon the bill as printed in this statement.

BRIEF FOR ROLLIN WHITE.

This is not an extension of patents under an act of Congress, but an authority to the Commissioner of Patents to rehear and determine as if they were original applications, now, for the first time, brought before him.

Upon such rehearing, the law and the rules of the Patent Office require—

1st. That ample notice shall be given, so that any person who desires may become a party, with all the rights of a party in a suit at law, to be present at the taking of testimony, to cross-examine witnesses, to produce his own witnesses, and to have an opportunity to argue all pertinent matters at the hearing.

2d. The application is examined by the principal examiner of the class to which the invention belongs, and a re-examination is made by the Commissioner himself, upon the following points, viz:

First. Was the invention new and useful when patented?

Second. Is it valuable and important to the public, and to what extent?

Third. Has the inventor been reasonably remunerated for the time, ingenuity, and expense bestowed upon it, and the introduction of it in use?

If not, has his failure to be so remunerated arisen from neglect or fault on his part?

Fourth. What will be the effect of the proposed extension upon the public interests?

Upon all these questions, the judgment of skilful men, trained for the particular business, is had, and the result, attained after a careful and deliberate examination and consideration of the questions involved, in the light of the testi-

mony, and assisted by the arguments of able counsel, is far more apt to be right and proper than would be the case if all these questions were to be determined by a committee of Congress in the limited time and with the attention which they would be able to bestow.

Hence the practice now almost universal upon the part of Congress to refer the questions named to the Patent Office for consideration and judgment of the proper officials

The sole questions, then, properly coming before this committee are—

1st. Has Rollin White already had a full, fair, and intelligent hearing before the Commissioner of Patents?

2d. Has he failed to have such a hearing without fault upon his part?

Upon the first proposition it is submitted that the facts show conclusively that at the date of hearing, and for some time previous, his regular counsel was sick and unable to attend to business; that important written testimony was, by reason of such sickness, never forwarded, or presented to the Commissioner; that other important testimony and exhibits were stolen just before the hearing, and were never before the Commissioner.

Either the sickness and unavoidable absence of counsel under such circumstances, the loss of material testimony under such circumstances, or the robbery of most important papers and exhibits, would have been sufficient cause for a new trial in a court of law; and certainly, where all are combined, as in this instance, there can be no doubt upon this point.

It is, moreover, apparent from the examiner's report, as printed herewith, that the want of the abstracted exhibits and papers were a serious inconvenience to him, although they did not affect his report, which was favorable to White, and it is possible, in spite of the closing statement in ex-Commissioner Foote's letter, that had the missing testimony been before him, his judgment in the premises might have been different.

If, however, the statement of Mr. Foote, referred to, is taken as his judgment, after mature reconsideration and examination of the case, it is apparent that he possesses that class of mind which comes to conclusions in advance of testimony, and that Mr. White did not have that full and fair hearing to which he was entitled by law.

Upon the other proposition, as to the failure of White to have a proper hearing, without fault upon his part, the proofs are conclusive, as certainly he could not have prevented the illness of Mr. Keller and the unfortunate results which followed it, or the robbery, which, curiously enough, took only the articles which affected the pending extension and overlooked all other valuables.

Should this bill become a law, then for the first time in the history of special legislation upon patents all parties will be protected.

Those who have been infringing these inventions since the date of their expiration go scot-free until these patents shall be extended by the Commissioner of Patents; those who, upon the belief that the patents were beyond revival, have invested their money in the manufacture of such fire-arms, can keep on in their manufacture upon very reasonable terms; the possible necessities of the Government are provided for without charge of royalty; and the inventor, in his decrepid old age, can have assurances of a modest support for seven years.

The features of this bill are believed to give to inventors rights within reasonable bounds to restrain patents from becoming obnoxious monopolies, and to provide for the equitable claims of enterprising rivalry to a degree which should commend it to a favorable consideration.

It would seem as if the opposition from a particular quarter, which has arrayed itself either openly or covertly against Mr. White and his inventions for a quarter of a century, and now seeks by its action to break down and destroy all other manufacturers of fire-arms in this country, should not be al-

lowed longer to deprive this petitioner of a right accorded under the law to the humblest citizen—his right to a new trial where the former trial was unfair and incomplete through his misfortune and without his fault.

GEO. W. DYER,
Of Counsel for Rollin White.

WASHINGTON, D. C., *March* 20, 1874.

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